

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN PRATTIS,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§

§ No. 102, 2012

§

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§ Court Below—Superior Court

§ of the State of Delaware

§ in and for Sussex County

§ Cr. ID No. 0708019882

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Submitted: August 2, 2012

Decided: August 23, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 23rd day of August 2012, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, John Prattis, filed an appeal from the Superior Court’s February 23, 2012 violation of probation (“VOP”) sentencing order. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior Court’s judgment on the ground that it is manifest on

the face of the opening brief that this appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in March 2008, Prattis entered a plea of guilty to Burglary in the Second Degree. He was sentenced to 8 years of Level V incarceration, to be suspended after 18 months for 2 years of Level III probation.² One of the conditions of his probationary sentence was evaluation for substance abuse and follow-up treatment. Prattis did not file a direct appeal, but has unsuccessfully filed several motions for sentence modification in the Superior Court.

(3) On February 23, 2012, Prattis' VOP hearing was held in Superior Court. The transcript of the hearing reflects that Prattis' counsel stated at the beginning of the hearing that Prattis admitted he used crack cocaine on two occasions in violation of the conditions of his probation. The Superior Court also expressed concern regarding Prattis' lack of a stable living situation and his continued need for drug treatment. The Superior Court found Prattis in violation of his probation and sentenced him to 6 years at Level V, with credit for 16 days previously served, to be suspended upon successful completion of the Key Program for 1 year of Level IV

¹ Supr. Ct. R. 25(a).

² Prattis' sentencing order was modified in January 2009 solely to revise the payees on his restitution obligation.

Residential Substance Abuse Treatment, in turn to be suspended upon completion of the Level IV Crest Program for 1 year of Level III Crest Aftercare.

(4) In his appeal from his VOP sentencing order, Prattis claims that the Superior Court a) erroneously found him in violation of his probation because the crack pipe that served as the basis for the VOP did not belong to him; and b) should have given him an opportunity to enter the Brandywine Counseling program before imposing a Level V sentence.

(5) Prattis' first claim is that the Superior Court erred when it found him in violation of his probation. It is well-settled that probation is an "act of grace" and that the Superior Court has broad discretionary power to decide whether or not to revoke probation.³ The decision to revoke probation requires only "some competent evidence" to "reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation."⁴ Prattis' admission, through his counsel at the VOP hearing, that he had used crack cocaine twice in violation of the conditions of his probation was sufficient to satisfy that

³ *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006) (citing *Brown v. State*, 249 A.2d 269, 271 (Del. 1968)).

⁴ *Id.* (citing *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

standard.⁵ As such, we conclude that the Superior Court neither erred nor abused its discretion when it found that Prattis had committed a VOP.

(6) Prattis' second claim is that the Superior Court should have sentenced him to the Brandywine Counseling program rather than to Level V. It is well-settled that, once a defendant violates the terms of his probation, the Superior Court has the authority to require him to serve the sentence originally imposed, or any lesser sentence.⁶ There is no evidence that the Superior Court's sentence exceeded Prattis' original Level V sentence, nor does Prattis so allege. As such, we conclude that the Superior Court neither erred nor abused its discretion when it imposed the sentence it did upon its finding of a VOP.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

⁵ The record also reflects that Prattis notified Probation and Parole in February 2012 that he had relapsed on crack cocaine.

⁶ *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005) (citing Del. Code Ann. tit. 11, §4334(c)).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice